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No. 80395-1

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**THE SUPREME COURT
OF THE STATE OF WASHINGTON**

CITY OF ARLINGTON, DWAYNE LANE, & SNOHOMISH COUNTY,

Respondents,

v.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS
BOARD, STATE OF WASHINGTON;

Respondents,

and

1000 FRIENDS OF WASHINGTON aka FUTUREWISE;
STILLAGUAMISH FLOOD CONTROL DISTRICT; PILCHUCK
AUDUBON SOCIETY; THE DIRECTOR OF THE STATE OF
WASHINGTON DEPARTMENT OF COMMUNITY, TRADE, AND
ECONOMIC DEVELOPMENT; & AGRICULTURE FOR
TOMORROW,

Appellants.

**SUPPLEMENTAL BRIEF OF FUTUREWISE, PILCHUCK
AUDUBON SOCIETY, & AGRICULTURE FOR TOMORROW**

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TO E-MAIL**

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I. Introduction

Island Crossing is farm land, with a small highway service area serving motorists today in the same basic configuration as it has since the 1960s.¹ Until 2004, Snohomish County recognized and protected Island Crossing's agricultural lands. In 2004, based on pressure from car dealer Dwayne Lane, the County reversed decades of protection and de-designated 75 agricultural acres in a 110 acre area, and redesignated the entire 110 acres from agricultural and rural to urban. The Central Puget Sound Growth Management Hearings Board (Board) recognized the error of the de-designation and found the County's actions noncompliant with the Growth Management Act (GMA)²; the Snohomish County Superior Court affirmed. The Court of Appeals reversed, holding that because some evidence supported the County's decision, the Board erred in failing to defer to the County.³ Because the Court of Appeals applied the wrong evidentiary standard and committed other errors, Futurewise, the Pilchuck Audubon Society, and Agriculture for Tomorrow (Futurewise) requested that this Court review the matter.

¹ CP XI, p. 2113, *Final Supplemental Environmental Impact Statement (FSEIS)* p. 2-42.

² *1000 Friends of Washington v. Snohomish County*, CPSGMHB No. 03-3-0019c, Final Decision and Order (March 22, 2004).

³ *City of Arlington v. Central Puget Sound Growth Management Hearings Board*, 138 Wn. App. 1, 154 P.3d 936 (2007) review granted *City of Arlington v. Central Puget Sound Growth Management Hearings Bd.*, ___ Wn.2d ___, ___ P.3d ___ (Apr 02, 2008) (No. 80395-1).

II. Assignments of Error

Futurewise alleges five assignments of error:

- (1) The Court of Appeals erred by failing to apply the substantial evidence test in reviewing the Board's decisions.
- (2) The Court of Appeals erred by failing to give any weight to the Board's interpretation of statutory criteria for expanding an urban growth area.
- (3) The Court of Appeals erred in finding that the Board "dismissed" the Higa-Burkholder report. Instead, the Board appropriately weighed it and assigned it little weight in light of the other evidence in the record.
- (4) The Court of Appeals erred in finding that the GMA supports Snohomish County's de-designation of agricultural land in the Island Crossing area.
- (5) The Court of Appeals erred in finding that the GMA supports addition of the Island Crossing land to the Arlington Urban Growth Area.

III. Issues for Review

Futurewise presents four issues for review:

- (1) Did the Central Puget Sound Growth Management Hearings Board (Board) correctly conclude that Snohomish County's de-designation of the land known as "Island Crossing" from agricultural and rural to urban commercial was unsupported by the weight of the record evidence, and did the Court of Appeals err when it failed to apply the substantial evidence test in reviewing the Board's decisions as required by the Administrative Procedures Act and Supreme Court precedent?
- (2) The GMA establishes requirements for the designation of agricultural lands of long-term commercial significance. In applying these requirements did the Board correctly conclude that the County's removal of the agricultural designation from the land

at “Island Crossing” was unsupported by the weight of the evidence in record, did not comply with the GMA, and was therefore clearly erroneous?

- (3) The GMA includes requirements for the designation of urban growth areas (UGAs). Did the Court of Appeals err in failing to give any weight to the Board’s interpretation of these requirements as required by the precedents of the Supreme Court?
- (4) In applying the GMA’s requirements for designating urban growth areas, did the Board correctly conclude that Snohomish County failed to comply with the GMA when it expanded the Arlington UGA to include the “Island Crossing” area?

IV. Relevant Facts

Futurewise adopts CTED’s statement of the case in its

Supplemental Brief, and provides additional facts as necessary below.

V. Argument⁴

A. The GMA Mandates Conservation of Agricultural Land. (Issue 3; Assignment of Error 4)

The Growth Management Act mandates conservation of agricultural land.⁵ This Court has held:

⁴ Both the Director of the State of Washington Department of Community, Trade, and Economic Development (CTED) and the Stillaguamish Flood Control District (District) have filed supplemental briefing. CTED and the District’s arguments are relevant to Futurewise’s Issues 1, 3, and 4. CTED also argues that the Court of Appeals erred by applying the wrong evidentiary standard, relevant to Futurewise’s Issue 2. Futurewise adopts all of these arguments by reference and they are not repeated herein.

⁵ RCW 36.70A.020(8); this Court acknowledged the mandatory language of the agricultural protection goal and the GMA’s requirements for conserving agricultural land in *King County v. Central Puget Sound Growth Management Hearings Bd.*:

In seeking to address the problem of growth management in our state, the Legislature *paid particular attention to agricultural lands*. . . . The purpose is to ‘assure the conservation’ of these lands. RCW 36.70A.060(1).⁶

B. Island Crossing is Agricultural Land. (Issue 3; Assignment of Error 4)

Agricultural land is land that is:

(a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics, and (c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses.⁷

Since at least 1978 until the present de-designation, Snohomish County has consistently recognized that Island Crossing is agricultural land.⁸ In this case, the Court of Appeals reversed the Growth Board’s determination that Snohomish County erred in de-designating Island Crossing based upon factor (c), that the land is “vulnerable to more intense

Although the planning goals are not listed in any priority order in the Act, the verbs of the agricultural provisions mandate specific, direct action. The County has a duty to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural industry.

King County v. Central Puget Sound Growth Management Hearings Bd., 142 Wn.2d 543, 558, 14 P.3d 133, 141 (2000).

⁶ *Redmond v. Central Puget Sound Growth Management Hearings Bd.*, 136 Wn.2d 38, 47, 959 P.2d 1091, 1094 (1998).

⁷ *Lewis County v. Western Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 502, 1139 P.3d 1086, 1103 (2006).

⁸ *City of Arlington*, 138 Wn. App. at 6, 154 P.3d at 938.

uses”.⁹ Although the County and Intervenor have argued otherwise, there is not even a scintilla of credible evidence suggesting that factors (a) and (b) are not met. There is no argument that the land is already characterized by urban growth. Whether land is *primarily devoted* to agriculture has been defined broadly by this court: “We hold land is ‘devoted to’ agricultural use under RCW 36.70A.030 if it is in an area where the land is actually used or capable of being used for agricultural production”.¹⁰

Island Crossing is in an active agricultural area. The County’s own staff reports note active agriculture in the area.¹¹ Aerial photographs taken in 2001 and 2003 confirm that these fields are plowed, and have crops growing.¹² Although the County noted anecdotal testimony in finding that the area was not characterized by commercial agriculture, that testimony was 50 years out of date,¹³ and contradicted by other, more current testimony in the record: In a comment letter to the County from Robert Lervick of Twin City Foods, located in Stanwood, Mr. Lervick wrote:

⁹ Id. at 15, 154 P.3d at 942.

¹⁰ *City of Redmond*, 136 Wn.2d at 53, 959 P.2d at 1097.

¹¹ CP XI, p. 2133 (*DSEIS* Figure 1-2) in Appendix A; CP XI, p. 2183 (*DSEIS* p. 2-33); CP XI, 2135 (*DSEIS* p. 1-6), listing “hay harvesting” as an existing use in Riverway Commercial Farmland, the designation of the agricultural lands at issue in Island Crossing, CP XI, 2135.

¹² CP XI, p. 2133 (*DSEIS* Figure 1-2); CP VI, p. 1130 in Appendix B.

¹³ *1000 Friends of Washington v. Snohomish County*, CPSGMHB No. 03-3-0019c, Final Decision and Order at 28 (March 22, 2004).

We currently contract with local growers in the Stillaguamish and Skagit valleys to raise peas for our plant in Stanwood. We have raised anywhere from 5000 acres to 10,000 acres of peas in this local area and **we currently contract a portion of those acres in the Island Crossing area and have found it ideal for raising peas.**¹⁴

Thus, there can be no question that the parcels in question are in an area of active agriculture. Furthermore, these lands contain prime soils, and are thus capable of supporting a variety of agricultural practices, ranging from dairy to peas to a large variety of other crops.¹⁵

1. Island Crossing has Long-term Commercial Significance for Agriculture.

After finding that land is not characterized by urban growth and in an area primarily devoted to agriculture, the final inquiry before land is designated is whether the land has long-term commercial significance for agriculture. The GMA defines long-term commercial significance:

"Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.¹⁶

Here, the "growing capacity, productivity, and soil composition" of Island Crossing all strongly support continued designation. The soils

¹⁴ CP VII, p. 1286 (emphasis added) in Appendix C.

¹⁵ CP XI, pp. 2183 – 84 (*DSEIS* pp. 2-34 – 2-34); 7 CFR § 657.5(a)(1) defines prime soils.

¹⁶ RCW 36.70A.030(10).

underlying Island Crossing are classified as prime, meaning that they have the “best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops...”¹⁷

2. Snohomish County Erred by Failing to Consider the WAC Factors in Light of the GMA’s Agricultural Conservation Imperative. (Issue 3; Assignment of Error 4)

In evaluating the impact of proximity to population areas and whether land is vulnerable to more intense uses, a jurisdiction may consider the ten factors set forth in WAC 365-190-050 (WAC factors).¹⁸ WAC 365-190-050 provides no internal guidance regarding how the factors should be considered, nor does it rank or weight the factors. While the County has discretion to decide how these factors fit within Snohomish County’s local circumstances, they must be evaluated in light of the purpose for which they were created: deciding which areas of agricultural land have long-term commercial viability, and protecting those lands. The proper inquiry for the County is not whether the land has any alternate use, nor whether a different use would bring higher financial returns or is otherwise “better” for the landowner or jurisdiction. The legislature has mandated conservation of agricultural land, and this court has already made it clear that the WAC factors are to be applied to

¹⁷ 7 CFR § 657.5(a)(1).

¹⁸ *Lewis County*, 157 Wn.2d at 502, 139 P.3d at 1103.

determine only whether agriculture in a particular area would fail because it is *vulnerable* to more intense uses.¹⁹

Only when the WAC factors are properly considered in light of the conservation imperative can the Legislature's objective of preserving commercially significant farmland be met. As this Court has noted, competition with other commercial or residential uses will almost always bring greater economic gain than conserving farmland.²⁰

In this case, the conservation mandate did *not* inform the County's "consideration" of the ten WAC factors. It was this lack of necessary context to the County's action that caused the Board to write at page 28 of its *Final Decision and Order*:

The Board acknowledges the County's assertion that the Council *considered* the contrary recommendations of the County Planning staff and Agriculture Advisory Board, as well as the guidelines in the GMA, CTED's procedural criteria, and reviewed all public testimony and comments before making its decision. To the extent that there is no dispute that this evidence was placed before the Council before it took action adopting Ordinance No. 03-063, it can be said that the legislative body "considered" that evidence.²¹

The evidence before the County regarding the WAC factors consisted of the County's own *Draft Supplemental Environmental Impact*

¹⁹ *Id.*

²⁰ *City of Redmond*, 136 Wn.2d at 52, 959 P.2d at 1097.

²¹ CP XIII, p. 2589 (Internal cites omitted, emphasis original).

*Statement (DSEIS),*²² the *FSEIS*,²³ the Planning and Development Services (PDS) staff report,²⁴ the Snohomish County Agricultural Advisory Committee recommendation,²⁵ comment letters from organizations like Futurewise, a report commissioned by Dwayne Lane from the Higa-Burkholder firm, and anecdotal evidence from testimony in the record. All evidence, excepting the Higa-Burkholder report and some citizen comments, supported the continued agricultural designation of this land.

a. *The Growth Board Did Not Err in Assigning Little Weight to the Higa-Burkholder Report.*

The Court of Appeals found error in the Growth Board's "dismissal" of the Higa-Burkholder report.²⁶ However, the Board did not "dismiss" the report; rather, it actually found:

[T]he Board construes any record declarations or conclusions entered by Mr. Lane's consultants to be reflections, if not direct expressions, of "landowner intent" and **assigns them the appropriate weight . . .**²⁷ (emphasis added)

Weighing record evidence in considering whether the County committed clear error is the Board's job. As described in detail below, the

²² CP XI, p. 2183 (DSEIS p. 2-33).

²³ CP XI, pp. 2061 – 2124.

²⁴ CP IX, pp. 1725 – 1738.

²⁵ CP VII, p. 1213.

²⁶ *City of Arlington*, 138 Wn. App. at 20-21, 154 P.3d at 945.

²⁷ *1000 Friends of Washington v. Snohomish County*, CPSPGMHB No. 03-3-0019c, Final Decision and Order at 29 (March 22, 2004).

Higa-Burkholder report is fraught with basic misunderstanding of the GMA, factual errors, and unsupported opinion. The Board properly viewed it as little more than an expression of landowner intent, rather than an objective analysis of the evidence. Substantial evidence supports the Growth Board's finding that the County committed clear error in designating Island Crossing on the basis of the WAC factors.

b. Substantial Evidence Supports the Growth Board's Finding of Clear Error in Designating Island Crossing Based on the WAC Factors.

The Growth Board properly considered the entire record before the County in making findings of clear error. Two reports directly address the WAC factors: the County's own *DSEIS*, and the Higa-Burkholder report commissioned by Dwayne Lane:

Availability of Public Facilities

*DSEIS*²⁸: Public water and sanitary sewer facilities are physically located in and adjacent to the proposal site. However, sanitary sewer service is restricted by the [General Policy Plan (GPP)] to Urban Growth Areas. The shoreline substantial development permit for the existing sewer line *restricts availability of sanitary sewer to the existing parcels zoned Rural Freeway Service*. (emphasis added)

*Higa-Burkholder*²⁹ The interchange is currently serviced by water and sewer, power, telecommunications, and gas. The fact that sewer expansion is limited by the existing

²⁸ CP XI, p. 2183 (DSEIS p. 2-33) in Appendix D.

²⁹ *City of Arlington*, 138 Wn.App. at 18-20, 154 P.3d at 944-45.

Shoreline permit (1977) only means that to expand sewer service, a proposal must be approved by the Snohomish County Council under a Shoreline Permit application. In fact, the facilities exist and, in the case of water are in use.

Analysis: Water, power, telephone, and gas are rural services, available anywhere in the rural and agricultural areas.³⁰ Snohomish County's comprehensive plan "does not consider water an urban service."³¹ Conclusively, sewer is not available. The shoreline permit has never been amended to allow the re-designated properties to use the sewer line.³² Sewer service is thus currently no more available to Dwayne Lane because it is on nearby lands than the crown jewels are available to tourists looking through security glass in the Tower of London.

Tax Status

DSEIS: Several large parcels in the area (approximately 32% of the area) are classified as Farm and Agricultural Land by the Snohomish County Assessor and are valued at their current use rather than "highest and best use." The other parcels in the area, however, are valued and taxed at their "highest and best use".

Higa-Burkholder: All but one parcel is smaller than 20 Acres Minimum for Open Space Taxation. Many property owners are being assessed tax rates that, according to the Snohomish County Assessor's Office, reflect "freeway influence" implying that the County believes that these properties have a "higher and better use" than agriculture. Taxes on this land are higher than the revenues generated

³⁰ RCW 36.70A.020(17).

³¹ CP XI, p. 2052 (*FSEIS* p. 2-41).

³² *Id.*

from farming. Tax assessments reflect the availability of water.

Analysis: Higa-Burkholder's reference to the current use taxation criteria is in error. These parcels are agricultural and subject to RCW 84.34.020(2), which has no minimum acreage if agricultural income minimums are met. If the minimums are not met, the land can be enrolled in the open space taxation program.³³ If inadvertent, Higa-Burkholder's mischaracterization of the program shows a careless evaluation of the facts in this case. If intentional, this error reflects exactly the bias that concerned the Growth Board in assigning little weight to the report. Furthermore, the Higa-Burkholder report claims that taxes are higher than farm revenues. That statement has no citation to authority in the report and can be remedied by enrolling in the current use taxation program. As the record shows, Island Crossing is currently farmed. That 32% of the land is in agricultural tax status is evidence that they are currently farmed. Since tax status is dependent on landowner applications, that the other parcels are not in agricultural tax status can reflect nothing more than land owner intent: Dwayne Lane's desire to remove the parcels from agricultural use.

³³ CP XI, p. 2113 (FSEIS p. 2-42).

Availability of Public Services

DSEIS: Public Services such as public water and sanitary sewer service are physically located within and adjacent to the proposal site. However, sanitary sewer service is restricted by the GPP [general policy plan, the county's adopted comprehensive plan] to Urban Growth Areas. The existing sanitary sewer line is available by conditions in the shoreline substantial development permit to existing parcels zoned Rural Freeway Service.

Higa-Burkholder: Island Crossing has automobile services, lodging, food, and transit access.

Analysis: The Higa-Burkholder report demonstrates a lack of familiarity with the GMA term "public services". Public services are fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other government services.³⁴ The services available to travelers at the interchange have nothing to do with whether Dwayne Lane's auto dealership will be able to receive adequate public services.

Relationship or proximity to urban growth areas

DSEIS: The proposal site is approximately 0.9 miles from the Arlington city limits and is **functionally separated from the City because it is within the Stillaguamish River floodplain**. The southern tip of the proposal site, however, is adjacent to the Arlington UGA. (emphasis added)

Higa-Burkholder: The Arlington UGA border is the southern boundary of the subject area. The City will annex the area through a special election in November of 2003.

³⁴ RCW 36.70A.030(13).

Analysis: Higa-Burkholder's analysis relies on maps and speculation rather than on-the-ground facts. The area is still not annexed. More importantly, Arlington is for the most part built on high ground and protected from flooding; Dwayne Lane's parcels are in the floodplain.³⁵ These parcels are in close proximity to Arlington like the Grand Canyon's rim is in close proximity to the Colorado River.³⁶

Predominant Parcel Size

DSEIS : Predominant parcel sizes are large and of a size typically found in areas designated commercial farmland. Nine parcels are located within the 75.5 acres of the proposal site designated Riverway Commercial Farmland. Approximate sizes of these parcels are 20.7 acres, 15.8 acres, 14.6 acres, 8.1 acres, 2.9 acres, and three smaller parcels.

Higa-Burkholder: The 1982 Snohomish County Agricultural Provision Plan (SCAPP) suggests the optimum size for agricultural parcels is 40 acres with 20 acres minimum for crop production if adjacent to other large parcels. Minimum size for specialty crops is ten acres. A majority of the parcels are smaller than the 20 acres considered minimum for large-scale farming and for qualification for the open space tax abatement program for agriculture.

Analysis: The Higa-Burkholder analysis relies on a 26-year old, pre-GMA document rather than the County's current GMA-based findings on predominant parcel size. The County has designated as agricultural

³⁵CP XI, p. 2159 (*DSEIS* Figure 2.2-1).

³⁶ Furthermore, as CTED has argued in its supplemental brief, the property is only "adjacent" if you stretch the meaning of that word to "touching at some point".

lands of long-term commercial significance farms of ten acres or larger; these parcels lie with the County's A-10 zone, which has a ten acre minimum lot size.³⁷ Of the farm land, 51.1 out of 75 acres are in parcels larger than 10 acres; there is one additional 8.1 acre parcel. Thus, the vast majority of land in question is in parcels optimally sized to farm and some of the few small parcels could be farmed together.

**Land Use Settlement Patterns and Compatibility with
Agricultural Practices**

DSEIS: Most of the proposal site is currently in farm use with interspersed residential and farm buildings.

Higa-Burkholder: Well-documented conflicts exist with traffic and urban development. Traffic counts have increased to the point where it is dangerous for farm vehicles to cross the highway and certainly to pasture animals that often escape endangering the traveling public. These things limit the viability of agricultural [sic].

Analysis: Higa-Burkholder's "well-documented conflicts" are not documented in the record. Agriculture is operating in the Island Crossing area today, belying any argument that it cannot. Furthermore, the parcels in question would constitute an urban island in the midst of agricultural operations.³⁸ Any existing conflicts would be magnified many times, endangering the viability of remaining farmland in violation of RCW 36.70A.060(1) (counties must assure that land uses adjacent to agricultural

³⁷ CP XI, p. 2131 (*DSEIS* p. 1-1).

³⁸ CP XI, p. 2133 (*DSEIS* Figure 1-2); CP XI, p. 2134 (*DSEIS* Figure 1-4).

lands “shall not interfere with the continued use ... of these designated

lands for the production of food [or] agricultural products...”).

Intensity of Nearby Uses

DSEIS: More intense land uses and urban land developments are located within the Rural Freeway Commercial node at the I-5/SR 530 interchange that has existed essentially in its present configuration since 1968. Farmland is located immediately to the east, and, separated by I-5, to the west.

Higa-Burkholder: This interchange represents one of two connections to I-5 for a large market area including Darrington, Arlington, Smokey Point and North Marysville. These communities have been some of the fastest growing areas in Snohomish County. Arlington has approved the development of an Airport Industrial Park that has the potential to add 4000 jobs to the community, half of which will use the Island Crossing Interchange over the next ten years.

The Stillaguamish Tribe has developed a tribal center that includes several high traffic generating businesses including a smoke shop, a pharmacy, fireworks store, a police station and a community center. This development is located at the intersection of SR 530 and Old Highway 99. Currently, the Tribe's property is served by City of Arlington Water, but it has no public sewer service. The Tribe has plans to expand their operation at Island Crossing by purchasing other land and converting it to Trust Land.

Analysis: Island Crossing is near a freeway interchange, and has a small collection of travel-related services. It has served travelers in that configuration for the last 40 years. Higa-Burkholder's argument that increases in traffic on the roads within the last few years has created an irreconcilable conflict with agriculture is unsupported; notes that further

development may occur in the area is speculative. The facts on the ground support the Board's analysis: Island Crossing has functioned agriculturally in its current configuration since 1968 and can do so into the future.

History of Land Development Permits Issues Nearby

DSEIS : No urban development permits have been issued in the vicinity of the proposal site except for the substantial shoreline development permit issued for the sewer line that serves only the existing rural freeway commercial uses.

Higa-Burkholder: Over 200 homes have recently been developed on 47th Street NE (sic)³⁹ less than one half mile from Island Crossing. Smokey Point Boulevard has been the center of residential growth over the past ten years. Island Crossing represents one of two access points to I-5 for all of this growth.

Analysis: The "over 200 homes" have been constructed in the Arlington Urban Growth Area, separated from Island Crossing by at least a half-mile of active farmland and outside of the flood plain.⁴⁰

Land Values under Alternative Uses

DSEIS: The area of the proposal site outside of the Rural Freeway Service designation is in the floodway fringe area of the Stillaguamish River. Higher uses than farming would be difficult to locate in the area because of the floodplain constraints.

Higa-Burkholder: Island Crossing has the potential to benefit Snohomish County economically. Jobs, sales tax revenue and property taxes are but a few of the economic benefits.

³⁹ A review of the County's vicinity map indicates that Higa-Burkholder may have meant 47th *Avenue* NE, as 47th Street NE is nowhere near Island Crossing. CP XI, p. 2132 (DSEIS Figure 1-1: Vicinity Map).

⁴⁰ *Id.*; CP XI, p. 2161 (DSEIS Figure 2.2-1: Flood Hazard Area Map).

Analysis: Higa-Burkholder misunderstands the factor. The inquiry is not whether Snohomish County or Dwayne Lane will benefit economically,⁴¹ but rather whether the land is worth more as farmland or for other uses.⁴² There is no economic analysis in the record supporting the conclusion that development will be worth more, given the property's location in the flood plain.

Proximity of Markets

DSEIS: Markets within Arlington, Marysville, and Stanwood are located in close proximity to the site.

Higa-Burkholder: Although this area is in the Puget Sound population center and access to markets for farm products is close by, most production is occurring elsewhere, for example, in Eastern Washington where fewer conflicts with urban land uses, access to large parcels and lower priced land make agriculture viable. Twin City Foods imports its raw product from the east side of the State and no longer grows product in this area.

Analysis: Higa-Burkholder's gloss on this factor is factually wrong, and unpersuasive. Twin City Foods does contract with farmers in the Island Crossing area.⁴³ Furthermore, the soils underlying Island Crossing are prime, and therefore ideally suited for growing a variety of crops.⁴⁴ The nearby urban markets mean fruit, vegetables, herbs, flowers,

⁴¹ An arguable issue, if you extend the planning horizon through the next flood.

⁴² WAC 365-190-050(1)(i).

⁴³ CP VII, p. 1286 in Appendix C.

⁴⁴ CP XI, p. 2184 (*DSEIS* p. 2-34); 7 CFR § 657.5(a)(1) defines prime soils.

boutique dairy, and other products have a ready market; in today's era of ever-increasing fuel prices, local businesses not dependent on expensive diesel fuel to reach markets will have an advantage.

C. Snohomish County's Comprehensive Plan Mandates Continued Agricultural Designation of Island Crossing. (Issues 1 & 2; Assignments of Error 1 & 4)

The GMA mandates the adoption of Comprehensive Plans.⁴⁵ They must then be followed.⁴⁶ Because Snohomish County's criteria unequivocally mandate designation of Island Crossing, this Court may resolve this case by upholding the Board's determination of clear error without reference to any other factor. Snohomish County's Comprehensive Plan, in LU 7 Implementation Measures, provided that "requests for deletion from or addition to designated farmland shall be based on the following mandatory criteria:"⁴⁷

1. prime farmland as defined by the U.S. Soil Conservation Service (SCS) and other Class III soils in the SCS capability classification;
2. identified as devoted to agriculture by:
 - Snohomish County plan designation,
 - Snohomish County Zoning Code Agriculture-10 acre,

⁴⁵ RCW 36.70A.060(3); 070; 070(1).

⁴⁶ RCW 36.70A.070. This section mandates that all elements of the comprehensive plan be consistent with the land use map. Here, because Island Crossing was de-designated in violation of Snohomish County's LU 7, the map is inconsistent with the Comprehensive Plan.

⁴⁷ CP XI, p. 2184 (*DSEIS* p. 2-34).

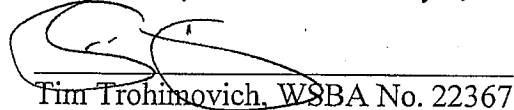
- identification in the 1982 agriculture land inventory, the 1990 aerial photo interpretation, or the 1991 field identification of land devoted to agriculture,
- 3. located outside a UGA,
- 4. located outside a sewer service boundary, and
- 5. a parcel of 10 acres or greater in Upland Commercial or Local Commercial Farmland areas.⁴⁸

As the County's DSEIS documented and the Board's *Corrected Final Decision and Order* concluded, all of these criteria are met.⁴⁹ There is no credible evidence to the contrary: these factors leave little room for discretionary choices, and are dispositive. In addition, LU 7 was previously adopted, was not challenged, and the provision's compliance with the GMA is not at issue in this appeal. Thus, this Court need look no further than these mandatory criteria to find that the Board's finding of clear error is supported by substantial evidence.

VI. CONCLUSION

For the reasons argued herein, Futurewise respectfully requests that this Court affirm the Board's decisions in this matter.

Respectfully submitted on May 2, 2008,


 Tim Trohimovich, WSBA No. 22367

Keith Scully, WSBA No. 28677
 Attorneys for Futurewise, Pilchuck Audubon Society, and
 Agriculture for Tomorrow, Respondents.

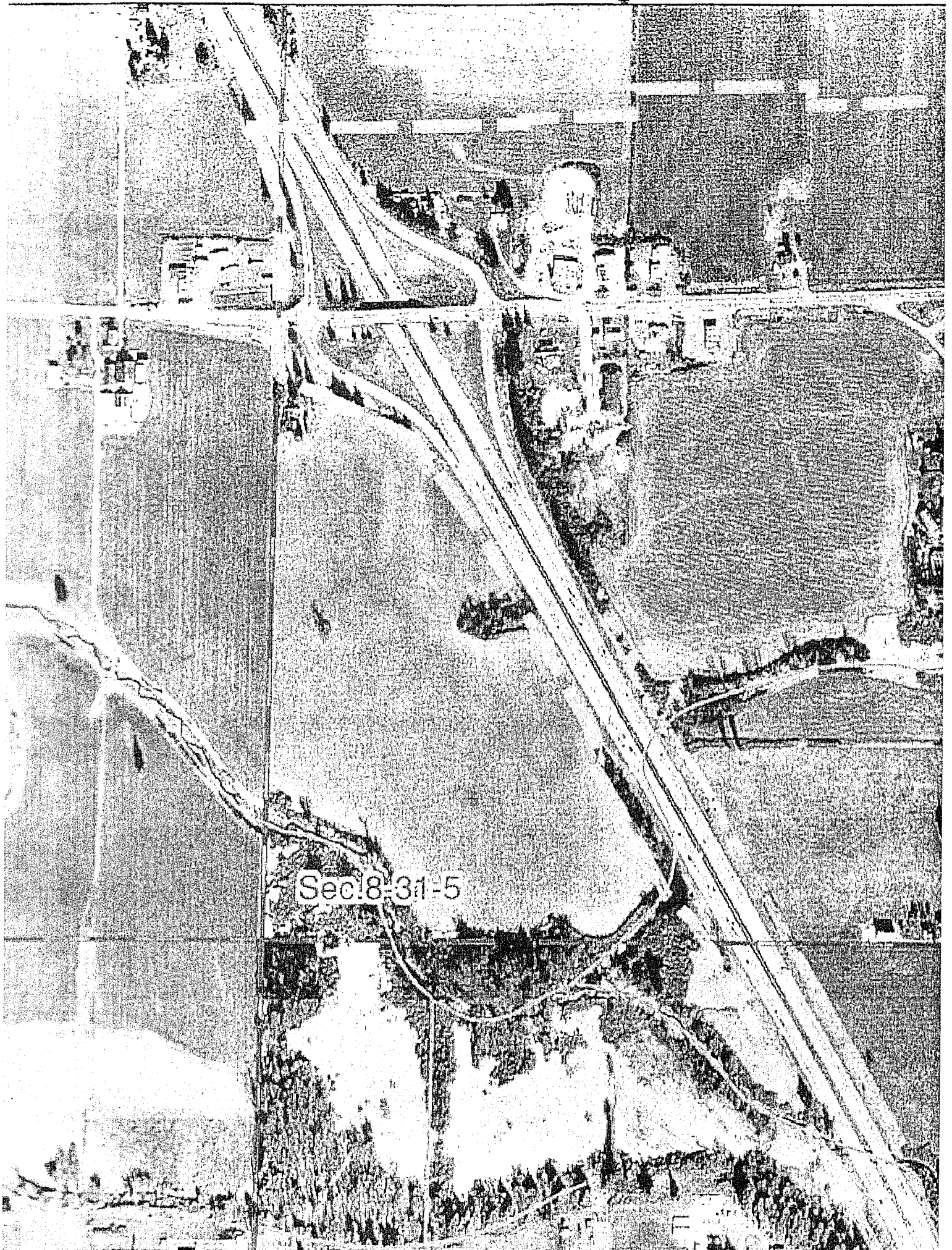
⁴⁸ *Id.*

⁴⁹ CP XI, pp. 2184-85 (*DSEIS* pp. 2-34-2-35) in Appendix D; CP XIII, p. 2585.

Appendix A:
Draft Supplemental Environmental
Impact Statement (DSEIS) Figure 1-2:
2001 Aerial Photograph

CP XI, p. 2133

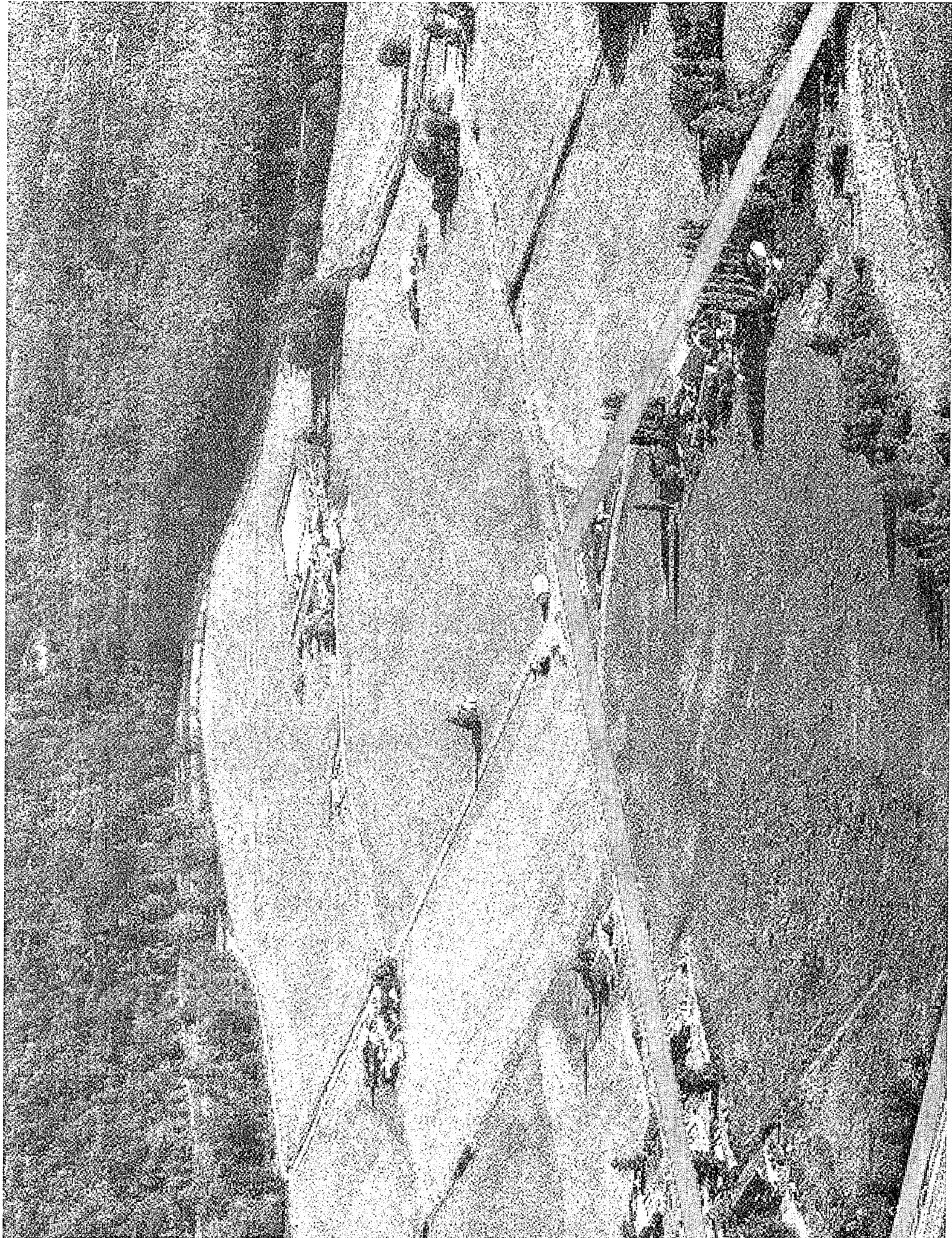
Figure 1-2



Sec 8-31-5

Appendix B:
2003 Oblique Aerial Photograph with
General Outline of the Properties at
Issue in this Case in Orange

CP VI, p. 1130



Appendix C:
Letter to the County from Robert
Lervick of Twin City Foods

CP VII, p. 1286

7/9/2003
Snohomish County Council
John Koster
Kirke Sievers
Gary Nelson (chair)
Dave Gossett
Jeff Sax

Gentleman;

Re: Island Crossing

Twin City Foods Inc is a processor, packaging and marketing company of frozen vegetables since 1945, with corporate headquarters in Stanwood, WA. Twin City Foods, Inc. employees approximately 200 full time employees and 250 seasonal employees in Stanwood processing and packaging peas as well as other vegetables from our other plants. We currently contract with local growers in the Stillaguamish and Skagit valleys to raise peas for our plant in Stanwood. We have raised anywhere from 5000 acres to 10,000 acres of peas in this local area and we currently contract a portion of those acres in the Island Crossing area and have found it ideal for raising peas. Any loss of agriculture ground is detrimental to our industry let alone one that has an existing use. It not only jeopardizes our employee's jobs but those of our grower base and there employees. The Growth Management Act was set-up for this very reason. One of its purposes was to control development in Agriculture land. In our opinion, there is no other legal interpretation but that this is viable agriculture ground and has been for many years. Twin City Foods, Inc. is opposed to any change of land use designation of agriculture-designated ground. Twin City Foods, Inc., our employees, our growers and their employees, and our many suppliers are dependent on agriculture ground being preserved

Thanks for your consideration
Roger O. Lervick

Twin City Foods, Inc.

Appendix D:
Excerpts from the *Draft Supplemental
Environmental Impact Statement
(DSEIS)*

CP XI, pp. 2181-87

Snohomish County GMA Comprehensive Plan

Dwayne Lane Proposal for 2003 Final Docket of Amendments

DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT



Snohomish County Planning and Development Services

February 2003

Consistency of the Proposed Action with Adopted Plans, Policies, and Regulations.

Overview

The Proposed Action would be inconsistent with provisions of the Washington State Growth Management Act that provide for resource land designation and conservation (RCW 36.70A.060 and .170) and require internal consistency for comprehensive plans (RCW 36.70A.070). Likewise, the Proposed Action is inconsistent with Snohomish County plans and policies implementing GMA, including policies that establishing review of agricultural designations, conditions for review and evaluation of boundary expansions to an individual UGA, and shoreline designations under the SMP. Finally, the proposal may be inconsistent with the State Floodplain Management regulations (RCW 86.16) and the minimum floodplain management standards and regulations of the National Flood Insurance Program (NFIP) (See Section 2.2, Flood Hazard Areas). These consistency issues are discussed in more detail below.

Litigation History

The history of GMA actions on the Dwayne Lane site is summarized in the Court of Appeals opinion, *Dwayne Lane v. Central Puget Sound Growth Management Hearings Board*, Case No. 46773-5-I (March 12, 2001). The proposal site was originally part of the 1995 Snohomish County Comprehensive Plan. The 1995 plan designated the site as Urban Commercial and included it in the Arlington UGA. As part of the case, *Sky Valley v. Snohomish County*, this designation was appealed to the Central Puget Sound Growth Management Hearings Board. The Board affirmed the County's designation, but the Board's decision was appealed to the Snohomish County Superior Court, which remanded the decision to the Board, finding no substantial evidence to support the removal of the agricultural designation.

The Planning Commission and the County Council reconsidered the designation in 1998 and re-designated the area agricultural, removing it from the Arlington UGA. That action was then appealed by Dwayne Lane to the Central Puget Sound Growth Management Hearings Board, which affirmed the County's re-designation. Further appeals to the Snohomish County Superior Court and the Washington State Court of Appeals also affirmed that decision. Litigation in this matter concluded in March 2001.

Consistency with Agricultural Policies

GMA Policies and Guidelines

The GMA requires the adoption of development regulations to conserve agricultural land, which is defined as:

"...land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production" (RCW 36.70A.030(2)).

The GMA requires that land be designated for agricultural purposes when the land is "not already characterized by urban growth," and where the land has "long-term significance for the commercial production of food or other agricultural products" (RCW 36.70A.170(1)(a)). The GMA also directs that a county or city should "encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes" (RCW 36.70A.177(1)).

The GMA addresses guidelines to classify agriculture in RCW 36.70A.050. The agricultural classification guidelines required by the GMA are provided in detail in the implementing rules of WAC 365-190. An excerpt from WAC 365-190-050 follows:

1. *In classifying agricultural lands of long-term significance for the production of food or other agricultural products, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service (SCS) as defined in Agriculture Handbook No. 210. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys. These categories incorporate consideration of the growing capacity, productivity and soil composition of the land. Counties and cities shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:*
 - a. *The availability of public facilities;*
 - b. *Tax status;*
 - c. *The availability of public services;*
 - d. *Relationship or proximity to urban growth areas;*
 - e. *Predominant parcel size;*
 - f. *Land use settlement patterns and their compatibility with agricultural practices;*
 - g. *Intensity of nearby uses;*
 - h. *History of land development permits issued nearby;*
 - i. *Land values under alternative uses; and*
 - j. *Proximity of markets.*
2. *In defining categories of agricultural lands of long-term commercial significance for agricultural production, counties and cities should consider using the classification of prime and unique farmland soils as mapped by the Soil Conservation Service. If the county or city chooses not to use these categories, the rationale for that decision must be included in its next annual report to the department of community development.*

Long-term commercial significance is defined by the guidelines as including "the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility for more intense uses of land" (WAC 365-190-030(11)).

Agricultural land designations under GMA have been upheld in other court cases. In *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 558 14 P.3d 133 (2000), the Washington State Supreme Court stated that the agricultural lands provisions of the GMA (RCW 36.70A.020(8), .060, and .170) direct counties and cities to:

- Designate agricultural lands of long-term commercial significance;
- Assure the conservation of agricultural land;
- Assure that the use of adjacent lands does not interfere with their continued use for agricultural purposes;
- Conserve agricultural land in order to maintain and enhance the agricultural industry; and
- Discourage incompatible uses.

Discussion. Analyses of the proposal conducted by Snohomish County Planning and Development Services (PDS) conclude that under the GMA's minimum guidelines for classification of agricultural

lands, the portion of the proposal site currently designated and zoned for agricultural uses should continue to be classified as such. This conclusion is based on the following analysis of the GMA guidelines:

- Availability of Public Facilities: Public water and sanitary sewer facilities are physically located in and adjacent to the proposal site. However, sanitary sewer service is restricted by the GPP to Urban Growth Areas. The shoreline substantial development permit for the existing sewer line restricts availability of sanitary sewer to the existing parcels zoned Rural Freeway Service.
- Tax Status: Several large parcels in the area (approximately 32% of the area) are classified as Farm and Agricultural Land by the Snohomish County Assessor and are valued at their current use rather than "highest and best use." The other parcels in the area, however, are valued and taxed at their "highest and best use".
- Availability of Public Services: Public services such as public water and sanitary sewer service are physically located within and adjacent to the proposal site. However, sanitary sewer service is restricted by the GPP to Urban Growth Areas. The existing sanitary sewer line is available by conditions in the shoreline substantial development permit to existing parcels zoned Rural Freeway Service..
- Relationship or proximity to urban growth areas: The proposal site is approximately 0.9 miles from the Arlington city limits and is functionally separated from the City because it is within the Stillaguamish River floodplain. The southern tip of the proposal site is adjacent to the Arlington UGA.
- Land Use Settlement Patterns and Compatibility with Agricultural Practices: Most of the proposal site is currently in farm use with interspersed residential and farm buildings.
- Predominant Parcel Size: Predominant parcel sizes are large and of a size typically found in areas designated as commercial farmland. Nine parcels are located within the 75.5 acres of the proposal site designated Riverway Commercial Farmland. Approximate sizes of these parcels are 20.7 acres, 15.8 acres, 14.6 acres, 8.1 acres, 2.9 acres, and three smaller parcels.
- Intensity of Nearby Uses: More intense land uses and urban land developments are located within the Rural Freeway Commercial node at the I-5/SR 530 interchange that has existed essentially in its present configuration since 1968. Farmland is located immediately to the east, and, separated by I-5, to the west.
- History of Land Development Permits Issued Nearby: No urban development permits have been issued in the vicinity of the proposal site except for the substantial shoreline development permit issued for the sewer line that serves only the freeway commercial uses.
- Land Values under Alternative Uses: The area of the proposal site outside of the Rural Freeway Service designation is in the floodway fringe area of the Stillaguamish River. Higher uses than farming would be difficult to locate in the area because of the floodplain constraints.
- Proximity of Markets: Markets within Arlington, Marysville, and Stanwood are located in close proximity to the site.

In addition, soils in the proposal area are prime farmland soils as defined by the SCS and Snohomish County. According to the *Soil Survey of Snohomish County Area, Washington*, prepared by SCS, the proposal area primarily consists of Puget silty clay loam. A small portion of proposal site consists of Puget fine sandy loam. The SCS and Snohomish County identify both of these soil types as prime farmland soils.

Based on review of the site characteristics and the GMA criteria, the proposal area meets the criteria for an agricultural area of long-term commercial significance. It contains prime farmland soils, is not characterized by urban growth, and is adjoined by uses that are compatible with agricultural practices.

Snohomish County General Policy Plan Agricultural Policies

The Snohomish County General Policy Plan designates the proposal area as Riverway Commercial Farmland. Relevant goals, policies and objectives are listed below:

- Goal LU 7. Conserve agriculture and agricultural land through a variety of planning techniques, regulations, incentive and acquisition methods.
- Objective LU 7.A. Classify and designate agricultural land of long-term commercial significance.
- Policy 7.A.1. Farmlands shall be classified and designated in three classes: Riverway Commercial Farmland, Upland Commercial Farmland, and Local Commercial Farmland as shown on the Future Land Use map and shown in greater detail on a set of assessor's maps which will be part of the implementation ordinances.
- Policy 7.A.2. Landowners may request in writing a review of the farmland designations as part of the county's annual GMA Comprehensive Plan amendment process.

LU 7 Implementation Measures state that requests for deletion from or addition to designated farmland shall be based on the following mandatory criteria:

Subject land shall be:

1. *prime farmland as defined by the U.S. Soil Conservation Service (SCS) and other Class III soils in the SCS capability classification;*
2. *identified as devoted to agriculture by:*
 - *Snohomish County plan designation,*
 - *Snohomish County Zoning Code Agriculture-10 zone,*
 - *Identification in the 1982 agriculture land inventory, the 1990 aerial photo interpretation, or the 1991 field identification of land devoted to agriculture,*
3. *located outside a UGA;*
4. *located outside a sewer service boundary, and*
5. *a parcel of 10 acres or greater in Upland Commercial or Local Commercial Farmland areas.*

Discussion. Pursuant to Goal LU 7 and supporting objectives and policies, the proposal site has been designated as an agricultural site of long-term commercial significance and has been designated as Riverway Commercial Farmland. Consistent with Policy 7.A.2, the landowner has requested a review of this designation as part of the county's Comprehensive Plan update process.

Analysis of the proposal conducted by PDS concludes that the portion of the site currently designated and zoned for agricultural uses continues to meet the criteria in the GPP for determination of agricultural land of long-term significance. This conclusion is based on the following:

- Prime farmland as defined by the U.S. Soil Conservation Service (SCS) and other Class III soils in the SCS capability classification: Soils in the proposal area are prime farmland soils as defined by the SCS and Snohomish County. According to the *Soil Survey of Snohomish County Area, Washington*, prepared by SCS, the proposal area primarily consists of Puget silty clay loam. A small portion of proposal site consists of Puget fine sandy loam. The SCS and Snohomish County identify both of these soil types as prime farmland soils.
- Devotion to Agriculture: The area is devoted to agriculture as indicated by its designation as Riverway Commercial Farmland in the GPP and is zoned A-10. The proposal site was identified as an agricultural area of primary importance in the 1982 agricultural lands inventory and was designated as Riverway Commercial Farmland in the *Snohomish County 1993 Interim Agricultural*

Conservation Plan, which used 1990 aerial photo interpretation and 1991 field identification of land devoted to agriculture.

- Location in/out of UGA: The area is located outside of the UGA.
- Sewer Service Boundary: The area is located outside of a sewer service boundary.
- Parcel Size: Predominant parcel sizes in the portion of the site designated Riverway Commercial Farmland are large and of a size typically found in areas designated as commercial farmland.

Based on the criteria of the LU 7 Implementation Measure, the proposal area satisfies all of the mandatory criteria for agricultural designation. Therefore, removal of the agricultural designation from this area would be inconsistent with these criteria.

Washington State Supreme Court – City of Redmond v Central Puget Sound Growth Management Hearings Board (1998).

In 1998, the Washington State Supreme Court reviewed a case concerning the definition of “agricultural land” under the GMA (*City of Redmond v. Central Puget Sound Growth Management et al.*). A key question in the case was whether a property owner’s current or intended use of land is conclusive in determining if the property is “agricultural land” under state law, which defines such land as “primarily devoted” to commercial agricultural operations and having “long-term significance for agricultural production.” The majority opinion found that:

“We hold the land is “devoted to” agricultural use under RCW 36.70A.030 if it is in an area where the land is actually used or capable of being used for agricultural production. . . . While the land use on the particular parcel and the owner’s intended use for the land may be considered along with other factors in the determination of whether a parcel is in an area primarily devoted to commercial agricultural production, neither current use nor land owner intent of a particular parcel is conclusive for purposes of this element of the statutory definition.”

If current use or landowner intent were the controlling factors, the majority noted, the GMA would not be effective in protecting agricultural lands as was the Legislature’s intent in establishing the GMA. Instead, the “long-term commercial significance for agricultural production” must also be considered. The Court noted that among the guidelines established for designating agricultural lands of long-term significance, cities and counties shall use the land capability classification system of the USDA Soil Conservation Service. Proximity to population areas and the possibility of more intense land uses shall also be considered.

Discussion. In this case, the Supreme Court concluded that landowner intent and current use are not controlling factors in determining whether a property is agricultural pursuant to the GMA. The Court noted that “long-term commercial significance for agricultural production” must be considered. The Court further noted the guidance by the Department of Community, Trade, and Economic Development to use the land capability classification system of the USDA Soil Conservation Service, among other considerations. The proposal area contains prime farmland soils as defined by the USDA Soil Conservation Service and Snohomish County. Other criteria established by the Washington Department of Community, Trade, and Economic Development, which were analyzed by PDS regarding this proposal are intended to balance the potential for future more intensive use of the land against its long-term commercial significance for agricultural uses. In general, the criteria indicate that the proposal area is compatible with low-intensity rural uses, such as agriculture and de-designation of the proposal area would be inconsistent with GMA and county policies.

Conclusion

The County's records establish that the Dwayne Lane site (except for the northwest portion designated Rural Freeway Service) is properly designated agricultural and that removal of that designation would conflict with the statutory duties of the GMA. Also, the removal of the Riverway Commercial Farmland designation does not meet the criteria in the County's GPP for de-designation of agricultural land and would be inconsistent with recent cases regarding agricultural land de-designation before the Central Puget Sound Hearings Board and the Washington State Supreme Court. When the Snohomish County Council considered the designation of the site in 1998, it concluded that the site met the criteria for designation as agricultural land of long-term significance as defined in the GPP and met the State's minimum guidelines for classification as agricultural lands under GMA. Circumstances have not changed since this Council decision in 1998.

Internal Consistency of Comprehensive Plan

Internal Consistency with Buildable Lands Provisions

The Dwayne Lane proposal would not comply with the internal consistency provisions of the GMA because it is inconsistent with GPP Policy LU 1.A.9 and CPP Policy UG-14. These policies establish conditions for review and evaluation of boundary expansions to an individual UGA. The conditions required to allow expansion have not been met in the Arlington UGA.

CPP Policy UG-14 establishes conditions under which urban growth areas in Snohomish County can be considered for expansion. The first condition is that at least 50% of any UGAs commercial/industrial available land capacity must be developed before being considered for expansion. The second condition requires that the County and the subject city prepare an updated land capacity analysis for the UGA using more recent capacity estimates and assumptions to confirm the accuracy of the percentage of growth. Snohomish County and its cities have complied with RCW 36.70A.215 by completing a review and evaluation program.

A buildable land report has been prepared to implement the GMA requirements. According to the January 2003 Buildable Lands Report completed through the Snohomish County Tomorrow process (*Snohomish County Tomorrow 2002 Growth Monitoring/Buildable Lands Report*), 23.3% of the available 1990 to 2012 commercial/industrial capacity in the Arlington UGA had been developed as of 2000 under Scenario A. Under Scenario B, 27.7% of available 1990 to 2012 commercial/industrial capacity in the Arlington UGA had been used by 2000. The proposed expansion of the Arlington UGA for additional commercial/industrial capacity does not meet Policy UG-14's 50% threshold condition under either scenario.

The third condition in Policy UG-14 requires that the affected city and the County consider reasonable measures that could be taken to increase capacity inside the UGA without expanding the boundaries of the UGA. According to RCW 36.70A.215, Snohomish County is required to adopt, in consultation with its cities, countywide planning policies that establish a buildable lands program that includes the identification of reasonable measures. At present, a preliminary list of reasonable measures has been adopted. A final list must be recommended by the Snohomish County Tomorrow Steering Committee and then submitted to the County Council for adoption as an appendix to the Countywide Planning Policies prior to consideration by affected cities. The Reasonable Measures list and evaluation process is still being developed and will be presented to the SCT Steering Committee in Spring 2003.

Discussion. According to both Buildable Lands reports, the percentage of commercial/industrial land capacity in the Arlington UGA used is less than 50% which does not meet the first and second condition

in Policy UG-14(d) of achieving at least 50% of capacity before considering a UGA expansion. Approval of the Dwayne Lane proposal would, therefore, be inconsistent with GPP and CPP policies regarding review and evaluation of boundary expansions to an individual UGA.

In addition, once adopted, the Final Reasonable Measures list will be used by the County Council to evaluate all subsequent UGA boundary expansion proposals consistent with UG-14. For this reason, the Dwayne Lane proposal will need to be evaluated using the preliminary list only. An alternative is to defer decision on this docket proposal until after the County has adopted the Final Reasonable Measures list as an appendix to the Countywide Planning Policies.

Internal Consistency with the Snohomish County Shoreline Master Program

The Dwayne Lane proposal would not comply with the internal consistency provisions of the GMA because it is inconsistent with Snohomish County's Shoreline Management Master Program. The SMP designates the portion of the proposal site outside of the existing Rural Freeway Service designation as a Rural Environment. The SMP states the intent of the Rural Environment as follows:

"The objective of designating a Rural Environment is to protect agricultural land from urban expansion, restrict intensive development along undeveloped shorelines, function as a buffer between urban areas, and maintain open spaces and opportunities for recreational and other uses compatible with agricultural activities."

Discussion. The Urban Commercial land use designation called for by the proposal allow urban intensity land uses and would conflict with the intent of the Rural Environment designation under the SMP and, including the area in the UGA, would be inconsistent with the policies of the SMP.

Washington State Floodplain Management Regulations.

The proposal may be inconsistent with the State Floodplain Management regulations (RCW 86.16) and the minimum floodplain management standards and regulations of the National Flood Insurance Program (NFIP). The Dwayne Lane site is designated floodway fringe by the County's flood hazard regulations. These regulations are a necessary prerequisite for Snohomish County's continued eligibility in the NFIP. Urban development would require infill and could possibly displace necessary floodwater storage capacities that are now served by its floodway fringe status. See Section 2.2, Flood Hazard Areas, for further discussion related to this issue.

2.4.4 Mitigation Measures

Mitigation measures related to potential land uses would not be required for the programmatic action of a *Comprehensive Plan* amendment or associated rezones. Development that may occur in the future under the Proposed Action or under the No Action Alternative (which allows for some development potential under existing zoning and *Comprehensive Plan* designations) may require mitigation to address specific land use impacts. Specific impacts of future development would be assessed, and appropriate mitigation measures would be imposed through the County's SEPA authority or the City of Arlington's SEPA authority should the site be annexed. For the Proposed Action to be consistent with adopted plans, policies, and regulations, the Snohomish County GPP, CPP, and SMP would need to be amended in areas relating to agricultural lands designations, UGA expansion criteria, and shoreline designations.

2.4.5 Significant Unavoidable Adverse Impacts

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DECLARATION OF SERVICE

2008 MAY -2 A 11: 33

BY STATE OF WASHINGTON)

STATE OF WASHINGTON)

COUNTY OF KING)
CLERK

SS.

I am a resident of the State of Washington, residing and employed in Seattle, Washington and employed as an attorney for Futurewise.

My business address is: Futurewise, 814 Second Avenue, Suite 500, Seattle, Washington 98104.

I am over 18 years of age, not a party to the above entitled action, and competent to be a witness herein.

On May 2, 2008 and in the manner indicated below, I caused true copies of the foregoing **Supplemental Brief of Futurewise, Agriculture for Tomorrow, and Pilchuck Audubon Society** to be served on:

The Supreme Court
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**FILED AS ATTACHMENT
TO E-MAIL**

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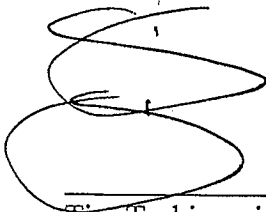
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I declare under penalty of perjury and the laws of the State of Washington
that the foregoing is true and correct.

DATED this 2nd Day of May 2008,



Tim Trohimovich, WSBA No. 22367
Attorney for Futurewise,
Agriculture for Tomorrow, and
Pilchuck Audubon Society